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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,620	01/30/2006	Matthias Winkel	ZAHFRI815US	7373
20210 7590 02/27/2009 DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301				
EXAMINER LE, DAVID D				
ART UNIT 3655		PAPER NUMBER		
MAIL DATE 02/27/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/566,620

**Applicant(s)**

WINKEL ET AL.

**Examiner**

David D. Le

**Art Unit**

3655

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-32 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-32 and 34-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. This is the third Office action on the merits of Application No. 10/566,620, filed on 30 January 2006. Claims 23-32 and 34-36 are pending.

### **Documents**

2. The following documents have been received and filed as part of the patent application:
  - Copy of Foreign Priority Document, received on 01/30/06
  - Information Disclosure Statement, received on 01/30/06

### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 January 2009 has been entered.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 23-32 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent No. 6,231,474 to Hawarden et al. (hereinafter referred to as Hawarden).

Claims 23-32 and 34-36:

Hawarden (Figs. 1-3B; column 1, line 60 – column 4, line 67) discloses an automated transmission downshift control comprising the steps of:

- Carrying out a first downshifting operation during a coasting mode of the automatic transmission (i.e., Fig. 1, element 14) from a higher gear to a lower gear (i.e., column 3, line 4 – column 4, line 67);
- Disengaging a clutch (i.e., Fig. 1, element 16) located between the automatic transmission and a vehicle engine (i.e., Fig. 1, element 12);
- Terminating the first downshifting operation by engaging the clutch located between the automatic transmission and the vehicle engine so that engine compression influences the vehicle (i.e., column 3, line 4 – column 4, line 67);
- If the vehicle falls below a threshold speed, carrying out a second downshifting operation of the automatic transmission (i.e., column 3, line 66 - column 4, line 9);
- Disengaging the clutch located between the automatic transmission and the vehicle engine (i.e., column 3, line 4 – column 4, line 67);
- Downshifting from the lower gear to a first next lower gear in the automatic transmission and subsequently downshifting from the first next lower gear to a second next lower gear while maintaining the clutch, located between the

- automatic transmission and the vehicle engine, disengaged during the second downshifting operation (i.e., column 3, line 4 – column 4, line 67);
- Determining a driver desire for positive drive torque (i.e., column 3, line 4 – column 4, line 67);
  - Terminating the second downshifting operation by engaging the clutch (i.e., column 3, line 4 – column 4, line 67);
  - Preventing the second downshifting operation if operational brakes are activated (i.e., column 3, line 4 – column 4, line 67);
  - Wherein the step of determining the driver desire for positive torque by identifying at least one of:
    - Releasing operative brakes;
    - Deflecting an activation lever for a direction of travel;
    - A predetermined steering angle of a vehicle steering mechanism; and
    - Activating of a power control member (i.e., column 3, line 4 – column 4, line 67).

***Response to Arguments***

6. Applicant's arguments with respect to claims 23-32 and 34-36 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Matsumoto et al. (U. S. Patent No. 5,161,432) teaches an engine brake control system for automatic power transmission with variable response characteristics in shifting operational mode into engine braking, as shown in Figs. 6-8.
- Iizuka (U. S. Patent No. 5,069,085) teaches a shift control system for automatic power transmission with enhanced shifting transition characteristics, as shown in Figs. 6-8.
- Takizawa (U. S. Patent No. 5,054,336) teaches a shift control for automatic transmission for effective engine brake running.
- Takizawa (U. S. Patent No. 5,048,650) teaches an engine brake running control for automatic transmission in automatic drive range.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Le whose telephone number is 571-272-7092. The examiner can normally be reached on Mon-Fri (0900-1730).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David D. Le/  
Primary Examiner, Art Unit 3655  
02/26/2009

ddl